

BEFORE THE
DOCKET FILE COPY ORIGINAL
Federal Communications Commission
WASHINGTON, D.C. **RECEIVED**

AUG 23 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Review of the Commission's)
Rules and Policies Affecting the)
Conversion to Digital Television)

MM Docket No. 00-39

To: The Commission

**INFORMAL COMMENTS ON
MSTV/NAB/ALTV PETITION FOR RECONSIDERATION**

Aries Telecommunication Corporation ("Aries"), licensee of WGBA(TV), Channel 26, Green Bay, Wisconsin, and permittee of WGBA-DT, Channel 41, Green Bay, Wisconsin, by its attorneys, hereby submits these Informal Comments in support of the Petition for Reconsideration filed by the Association for Maximum Service Television, Inc. ("MSTV"), the National Association of Broadcasters ("NAB"), and the Association of Local Television Stations, Inc. ("ALTV") in the above-referenced proceeding.¹ In submitting these Comments, Aries joins MSTV, NAB, and ALTV as well as other UHF licensees who filed comments in this proceeding² in urging the Commission to protect maximized digital television ("DTV") facilities past their construction permit deadlines, particularly in the case of analog UHF licensees with

¹ See MSTV/NAB/ALTV Petition for Reconsideration, filed March 15, 2001.

² See Comments on the MSTV/NAB/ALTV Petition for Reconsideration of Holston Valley Broadcasting Corporation, filed April 4, 2001; Informal Comments on MSTV/NAB/ALTV Petition for Reconsideration of Pegasus Communications Corporation, filed June 21, 2001.

No. of Copies rec'd
12/13/01

014

digital facilities in the UHF spectrum, so as to place these stations on an equal footing with their VHF counterparts.

Discussion

The Commission's *Report and Order* in this proceeding implemented a three-stage approach to the transition to DTV. In the first stage, ending on May 1, 2002, all commercial television stations must build out and commence operation of their DTV facilities. In the second stage, ending on December 31, 2003, these stations must elect a digital channel. Finally, in the last stage, ending December 31, 2004, commercial licensees must fully replicate the service area of their NTSC station or lose protection of any unreplicated area.³ The business plans of many broadcasters were consistent with this schedule. They planned to initially construct smaller facilities to comply with the May 1, 2002 deadline and later, as the transition progressed, to modify their facilities to fully replicate or maximize their service areas once DTV receiver penetration levels had increased. However, while analog VHF licensees may continue to pursue this graduated business plan, many analog UHF licensees may not do so due to the Commission's imposition of a different deadline for replication of service than for maximization of digital facilities. This disparity unfairly discriminates against analog UHF licensees in favor of their analog VHF competitors.

Specifically, the typical analog VHF station with a UHF DTV allocation has been allotted DTV facilities with very high effective radiated power ("ERP"), often at or near 1,000 kilowatts, in an effort to replicate the station's analog coverage. These high-power facilities are protected through December 31, 2004. Regardless of the digital facility that an analog VHF station uses

³ *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 5946, ¶ 24 (2001).

for its initial digital operation on May 1, 2002, its full replication facility is protected from any encroachment by other stations until the end of 2004. By contrast, the typical UHF station with a UHF DTV allocation was allotted replication DTV facilities with a substantially lower ERP. While these UHF stations have been permitted to seek maximized DTV facilities to compete on a more equivalent basis in the digital environment, the Commission requires that these maximized facilities be fully constructed by the initial buildout deadline of May 1, 2002. If the maximized facilities are not so constructed, the construction permit is lost, and the maximized facilities, which offer technical competitive equivalence with the VHF competitors, will be lost. This disparity in treatment of analog UHF stations with DTV channel allocations in the UHF band and VHF stations whose DTV channel allocations are also in the UHF band places these UHF stations at a disadvantage with respect to similarly situated VHF competitors and carries over into the digital environment the historical disadvantage of UHF stations vis-à-vis their VHF counterparts.

Aries' situation amply illustrates this point. Aries is a "mom and pop" company that operates UHF station WGBA(TV), the NBC affiliate in the Green Bay market. Its main competitors are three longstanding VHF stations, which are the ABC, CBS, and FOX affiliates in the market. These stations have been serving the market since the 1950s and are operated by large group owners that together account for more than 75% of the market's revenues.⁴ While Aries' digital facility, WGBA-DT, was allotted an ERP of 285.5 kilowatts of power, the UHF DTV facilities of the three other network affiliates were each allotted an ERP of 1,000 kilowatts. Accordingly, to keep WGBA(TV) competitive with these stations, Aries applied for and obtained

⁴ See BIA's Investing in Television 2001, 2nd ed.

a construction permit for a maximized 1,000 kilowatt DTV facility.⁵ But while the ABC, CBS, and FOX affiliates may construct an interim lower power facility at modest cost by the May 1, 2002 deadline and wait until the end of 2004 to construct their full 1,000 kilowatt facilities, Aries must almost immediately begin to expend substantial resources to build out its maximized facility or be subject to the threat of encroachment on its expanded coverage area by other stations. Aries will have to make these expenditures at a time of low DTV receiver penetration and before the development of a viable DTV market, while its historically well-heeled competitors may gradually transition to fully digital facilities pursuant to a reasonable business plan consistent with market realities. The Commission's disparate treatment of UHF and VHF analog stations transitioning to DTV is not only inequitable, but it preserves and exacerbates in the digital environment the historical economic and technical disparities between UHF stations such as WGBA(TV) and their VHF competitors.

Throughout the proceeding adopting the rules for the digital transition, the Commission has expressed a belief that the deployment of DTV would eliminate many of the remaining disadvantages of UHF stations.⁶ As most digital stations will be operating on the UHF band, and as the reception of digital signals in both the VHF and UHF bands should produce an equivalent picture, it was expected that the historical status of the UHF station as a second class technical citizen would be overcome. However, if UHF analog licensees with DTV facilities in the UHF

⁵ FCC File No. BPCDT-19990902AAG.

⁶ *See, e.g., 1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 15 FCC Rcd 11058, ¶¶ 37-38 (2000); *Review of the Commission's Regulations Governing Television Broadcasting, Report and Order*, 14 FCC Rcd 12903, ¶ 89 (1999).

For these reasons, Aries joins MSTV, NAB, ALTV, Holston Valley Broadcasting Corporation, and Pegasus Communications Corporation in requesting that the Commission act expeditiously to (i) modify the DTV Table of Allotments to reflect the maximized facilities that have been permitted for UHF licensees and (ii) grant an extension of time in which to complete the construction of all maximized DTV construction permits to place such licensees on an equal footing in the digital world with their VHF counterparts. Aries and other analog UHF broadcasters currently have only approximately eight months to fully build out their maximized DTV facilities. In order to comply with this deadline, these broadcasters must take immediate steps to order equipment and otherwise plan for the buildout. Accordingly, Aries requests immediate action on its request so as to provide it and other similarly situated broadcasters with clear directives regarding their investment decisions.

ARIES TELECOMMUNICATION CORPORATION

Its Attorneys

Dated: August 23, 2001

CERTIFICATE OF SERVICE

I, Rhea Lytle, hereby certify that on this 23rd day of August, 2001, copies of the foregoing were served by hand delivery* and/or First Class United States mail, postage prepaid, on the following:

Chairman Michael K. Powell*
Federal Communications Commission
445 12th Street, SW
Room 8-B201
Washington, D.C. 20554

Commissioner Gloria Tristani*
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy*
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Commissioner Michael J. Copps*
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Commissioner Kevin J. Martin*
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Roy J. Stewart, Chief*
Mass Media Bureau
Federal Communications Commission
445 12th Street, SW, Room 2-C347
Washington, D.C. 20554

John H. Morgan*
Mass Media Bureau
Federal Communications Commission
445 12th Street, SW, Room 2-C864
Washington, D.C. 20554

Victor Tawil, Senior Vice President
Association for Maximum Service
Television, Inc.
1776 Massachusetts Avenue, NW, Suite 310
Washington, D.C. 20036

Henry L. Baumann
Jack N. Goodman
Valerie Schulte
National Association of Broadcasters
1771 N Street, NW
Washington, D.C. 20036

Jonathan D. Blake
Jennifer A. Johnson
Russell D. Jessee
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, D.C. 20044

David L. Donovan
Vice President Legal and Legislative Affairs
Association of Local Television Stations, Inc.
1320 19th Street, NW, Suite 300
Washington, D.C. 20036

George E. DeVault, Jr.
Holston Valley Broadcasting Corporation
P.O. Box 1971
Kingsport, TN 37662



Rhea Lytle